

FEDERAL COMMUNICATIONS COMMISSION

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ADVISORY COMMITTEE ON DIVERSITY FOR
COMMUNICATIONS IN THE DIGITAL AGE

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TUESDAY
SEPTEMBER 22, 2009

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The Advisory Committee on
Diversity for Communications in the Digital
Age convened in the Commission Meeting Room of
the Federal Communications Commission, 445
12th Street, S.W., Washington, D.C. at 10:00
a.m., Henry Rivera, Chairman, presiding.

FCC COMMISSIONERS PRESENT:

MIGNON CLYBURN, FCC Commissioner
MICHAEL COPPS, FCC Commissioner

COMMITTEE MEMBERS/REPRESENTATIVES PRESENT:

HENRY RIVERA, Chairman
BARBARA KREISMAN, Designated Federal Officer
JAMILA BESS JOHNSON, Office of Michael Copps
CAROLYN FLEMING-WILLIAMS, Deputy Federal
Officer
JAMES ASSEY, NCTA

MARIA BRENNAN, American Women in Radio and
Television*
GEOFFREY BLACKWELL, Chickasaw Nation
Industries, Inc.
KATHY BROWN, Verizon
TONI BUSH, Virgin Mobile
RALPH EVERETT, Joint Center for Political and

Economic Studies
DAVID GOODFRIEND, Council Tree Communications
PATRICK GUSMAN, National Urban League

COMMITTEE MEMBERS/REPRESENTATIVES PRESENT:

RAYMOND R. GUTIERREZ, Showtime Networks*
STEVE HILLARD, Council Tree Communications*
HOWIE HODGES, One Economy Corporation

DAVID HONIG, Minority Media and
Telecommunications Council
RONALD JOHNSON, Ronson Network Services
DEBRA LEE, BET Holdings, Inc.
ANNE LUCEY, CBS
JANE MAGO, National Association of
Broadcasters

ROBERT MENDEZ, Disney-ABC*
KAREN NARASAKI, Asian American Justice Center
MELISSA NEWMAN, Qwest
SUSAN PATRICK, Patrick Communications
JEANINE POLTRONIERI, AT&T
ANDREW SCHWARTZMAN, Media Access Project
ANITA STEPHENS-GRAHAM, Opportunity Capital

Partners*

DIANE SUTTER, Shooting Star Broadcasting
HARRY WINGO, Google, Inc.
JIM WINSTON, National Association of Black
Owned Broadcasters

FCC STAFF PRESENT:

WILLIAM FREEDMAN, Media Advisor for
Commissioner Baker
THOMAS REED, Director, Office of
Communications Business Opportunities
SHERRESE SMITH, Media Advisor for Chairman
Genachowski

*Participating via telephone

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P R O C E E D I N G S

10:08 a.m.

MS. KREISMAN: Good morning, everyone. Good morning, Chairman Copps, Commissioner Copps. I'm used to saying Acting Chairman Copps, we worked together during the transition. Good morning, Commissioner Copps, Chairman Rivera, distinguished members. Thank you for taking time out from your busy schedules to come this morning to the second meeting of the Advisory Committee for Diversity in the Digital Age under its new charter.

You have a packet of information in front of you. All of the contents of that packet have been previously emailed to you, so you've had a chance to review it, hopefully. The committees have been very hard at work over the last several months. And, as a result, today we have the opportunity to consider several comprehensive best practices proposals. We're also pleased to have with us

1 Mr. Gusman from the National Urban League, and
2 other speakers, who we are pleased to have
3 taken the time out from your schedule to be
4 here with us today.

5 With that, I think maybe before I
6 turn it over to Henry, I'm just going to go
7 around the room and have you identify yourself
8 as a member, or a substitute so the reporter
9 can capture that. And then I'm going to ask
10 those on the phone to identify themselves.
11 Why don't we start with Geoffrey.

12 MR. BLACKWELL: Chukma. My name
13 is Geoffrey Blackwell. I work with Chickasaw
14 Nation Industries and the National Congress of
15 American Indians.

16 MS. POLTRONIERI: Jeanine
17 Poltronieri at AT&T, and I'm here as a
18 substitute.

19 MS. NEWMAN: Melissa Newman at
20 Qwest.

21 MR. GOODFRIEND: David Goodfriend
22 on behalf of Council Tree Communications.

1 MS. LEE: Debbie Lee, CEO of BET
2 Networks, and I'm a member.

3 MR. ASSEY: James Assey with NCTA,
4 and I'm a member.

5 MR. SCHWARTZMAN: Andrew
6 Schwartzman, Media Access Project, and I'm a
7 member.

8 MS. NARASAKI: Karen Narasaki with
9 the Asian-American Justice Center, and I'm a
10 member.

11 MS. BROWN: Good morning. Kathy
12 Brown with Verizon, a member.

13 MR. HODGES: Good morning. My
14 name is Howie Hodges with One Economy
15 Corporation, and I'm a substitute for Rey
16 Ramsey, President of One Economy.

17 MR. JOHNSON: Good morning.
18 Ronald Johnson from Ronson, and I'm a member.

19 MR. EVERETT: Ralph Everett, Joint
20 Center for Political and Economic Studies, and
21 I'm a member.

22 MR. WINSTON: Jim Winston,

1 National Association of Black Owned
2 Broadcasters. I'm a member.

3 MR. GUSMAN: Good morning.
4 Patrick Gusman with the National Urban League,
5 and I'm here for Marc Morial, our President
6 and CEO.

7 MR. WINGO: Hi, Harry Wingo on
8 behalf of Google, Inc. I'm here representing
9 Alan Davidson.

10 MS. MAGO: Jane Mago, National
11 Association of Broadcasters. I'm a member.

12 MS. LUCEY: Ann Lucey, CBS
13 Corporation here representing Matt Blank of
14 Showtime.

15 MS. PATRICK: Susan Patrick,
16 Patrick Communications. I'm a member.

17 MS. SUTTER: Diane Sutter,
18 Shooting Star Broadcasting, member.

19 MR. HONIG: David Honig, MMTC,
20 member.

21 MS. BUSH: Toni Bush, a member.

22 MS. KREISMAN: Barbara Kreisman,

1 Designated Federal Official.

2 CHAIRMAN RIVERA: Henry Rivera,
3 Chairman.

4 MR. COPPS: Mike Copps. I wish I
5 was a vicarious member.

6 (Laughter.)

7 MS. JOHNSON: Jamila Bess Johnson,
8 Office of Michael Copps.

9 MS. SMITH: Sherrese Smith, Media
10 Advisor for Chairman Genachowski.

11 MR. FREEDMAN: I'm Bill Freedman,
12 Media Advisor for Commissioner Meredith Baker.

13 MS. WILLIAMS: Good morning.
14 Carolyn Fleming Williams, Deputy Designated
15 Federal Officer.

16 MR. REED: Good morning. Thomas
17 Reed of FCC, OCBO Director.

18 MS. KREISMAN: Thank you very
19 much. Who do we have on the phone, if you
20 could identify yourself.

21 MR. GUTIERREZ: This is Ray
22 Gutierrez, Showtime Networks sitting in for

1 Matt Blank, President and CEO of Showtime
2 Networks.

3 MS. GRAHAM: Anita Stephens-
4 Graham, Partner, Opportunity Capital Partners,
5 and I'm a member.

6 MR. MENDEZ: Bob Mendez, Disney-
7 ABC, and I'm a member.

8 MR. HILLARD: Steve Hillard,
9 Council Tree Communications, and I'm a member.

10 MS. KREISMAN: Anyone else?

11 MS. BRENNAN: Maria Brennan,
12 member, President of American Women in Radio
13 and Television.

14 MS. KREISMAN: I guess that's it.
15 Thank you all very much. With that, I turn
16 the proceedings over to the Chairman.

17 CHAIRMAN RIVERA: Commissioner
18 Clyburn, welcome. We're so happy you're here.
19 Commissioner Clyburn, one of our newest
20 Commissioners.

21 So, I want to welcome all of you.
22 You have been working very hard over the

1 summer. On a little sour note, I would have
2 to say that most of you have been working very
3 hard over the summer, some of you have not.
4 And that has been brought to my attention by
5 the Chairs of the Subcommittees, and I would
6 suggest to you that if you are not interested
7 in pulling your weight, please let me know.
8 We do have others who are interested in being
9 members of this Committee, and we will forward
10 that recommendation to the appropriate people
11 here at the Commission.

12 So, with that bitterness out of
13 the way, I will again thank you for all of
14 your work, and ask Chairman Copps if he has
15 any remarks for the good of the body here.

16 COMMISSIONER COPPS: Good morning,
17 now that you've set the scene.

18 (Laughter.)

19 COMMISSIONER COPPS: I came down,
20 primarily, to listen. I'll have a chance to
21 speak at a little more length at Brother
22 Everett's event up on Capitol Hill during the

1 noon hour, and I look forward to that. But,
2 I'm really excited today. I think this is --
3 after being around here for eight years, and
4 the Committee under Henry's leadership to work
5 so hard, and many of you participated in it,
6 but a lot of times the recommendations just
7 seemed to end up in a hole somewhere and
8 nothing happened. And, now I think we really
9 have much more than any time I can ever
10 remember in my eight years here, the
11 possibility, indeed, the likelihood, the
12 strong probability of really taking some
13 meaningful action on diversity in the
14 communications industry. And that has got to
15 be exciting, exciting for you more so than it
16 is for me.

17 As you know, when I was Acting
18 Chairman for five months earlier this year,
19 even though we had DTV, which was a lot of
20 work, and we had broadband, I tried to put
21 this issue right on the front burner, make
22 sure we could get this Committee reconstituted

1 and get a sterling cast of members. And I
2 think we've had some good committees, I think
3 this looks like the best one yet. And I came
4 down and charged you with really getting some
5 recommendations to us promptly.

6 I'm a great believer, as I think I
7 told you last time, and I think it merits
8 repeating, we don't often get little windows
9 of reform that open up in this country of
10 ours. We've had eight years of kind of tough
11 slugging, sloughing around this town, and
12 around the country. Now we have that little
13 window of reform open. None of us knows
14 exactly how far it's open. None of us knows
15 how long it's going to stay open. None of us
16 know what the situation is going to be a year
17 from now, and the likelihood to get action, so
18 we have an historic opportunity, and we have
19 an historic obligation to really act promptly,
20 for everybody to pull their weight, as you
21 say, and for this Committee to get its
22 recommendations in, and then for the

1 Commission to act.

2 I'm pleased about the constitution
3 of the Commission with my friend, Mignon,
4 here, now. We've got Tom Reed, and Mark Lloyd,
5 and Sherrese Smith, Jamila is helping me out
6 in my office. I think we really have committed
7 people here who want to use this opportunity
8 to make a difference.

9 I understand that committees have
10 been working hard. I talked when I came down
11 here in May, I guess it was, about let's get
12 the Adarand Studies, let's find out what we
13 have to do on that. We don't want to take a
14 year and a day to be studying, if we don't
15 have to, but we have to go to court with
16 credible data, and credible legal
17 justification so we can sustain whatever it is
18 we do. So, I'm anxious to see the
19 recommendations on what we have to do, and the
20 Adarand Studies.

21 It's going to take a while, we all
22 know, even given the urgency that I talked

1 about to get final recommendations on all of
2 these things done, so we need to be thinking
3 about some interim steps that we can take.
4 And that's why I mentioned full file review
5 when I was down here, and I understand you
6 also have done a lot of work on that, so I'm
7 looking forward to it.

8 I think I'm in a position now
9 where I can promise that your recommendations
10 will be seriously considered, that they will
11 be looked at promptly, and, hopefully, acted
12 on promptly. And I'm going to be doing
13 everything I can to make sure that they are
14 acted on promptly. So, I'm glad to be here,
15 and I thank each and every one of you for the
16 effort and the time that you're putting into
17 this, but know that this time it's really for
18 real. And I think we really can get something
19 done. Thanks.

20 CHAIRMAN RIVERA: Thank you so
21 much, Chairman Copps.

22 Commissioner Clyburn, would you

1 like to address the group?

2 COMMISSIONER CLYBURN: Good
3 morning. One of the benefits in this system
4 that I am getting used to, as it relates to
5 seniority, and I'm not senior, means for
6 better or worse, that a lot of times what --
7 things have already been said by the time it
8 gets down to me, but thank you. I appreciate
9 it.

10 I am not here to give a speech,
11 either. You are a great group of experts, an
12 incredible resource that I am looking forward
13 to learning from, and considering ideally
14 adopting the proposals that I know you will
15 hand down. This means a lot to me,
16 personally.

17 Some of you who know my background
18 know that I truly believe that diverse voices
19 in all sectors that we speak about today, and
20 as it relates to the world of communications
21 is essential for a robust and -- I don't even
22 know how to say it, just a robust and a

1 complete reflection of what the best of what
2 this nation has to offer. So, I'm looking
3 forward to working with you.

4 We've got some challenging times
5 ahead of us, but I know that the persons in
6 this room are up to the challenge. And I
7 think sometimes challenging times bring with
8 it a whole series of wonderful options and
9 opportunities that all of us will be proud of
10 as we move forward. I'm looking forward to
11 being a part of this incredible journey that
12 we are continuing, and looking forward, again,
13 to working with you. I am really, really
14 excited about being here.

15 CHAIRMAN RIVERA: Thank you,
16 Commissioner. And we really appreciate your
17 being here.

18 The Commissioners may have to come
19 and go, depending on their schedules, so don't
20 be surprised if they have to get up and leave.
21 And the Chairman may be joining us, we're not
22 quite sure of his schedule either, so we will

1 see about that. If he does come, obviously,
2 we'll stop the proceedings wherever we are,
3 should he wish to address the group.

4 Before we get started, we have
5 some guests with us that I would like to
6 introduce, or have introduced. Diane, you
7 brought your BLT class. Would you be so kind
8 as to let the group -

9 MS. SUTTER: Never leave home
10 without them.

11 CHAIRMAN RIVERA: Yes.

12 (Laughter.)

13 CHAIRMAN RIVERA: Let the group
14 know what the BLT is all about, and introduce
15 your group.

16 MS. SUTTER: Certainly. The
17 National Association of Broadcasters through
18 their Education Foundation has, for the past
19 10 years, sponsored a program called the
20 Broadcast Leadership Training Program. It is
21 a 10-month executive-style MBA program that
22 meets in Washington one weekend a month for

1 the purpose of training women and minorities
2 to become CEOs and owners of broadcast
3 properties.

4 Through the course of the last 10
5 years, all the women and minorities that have
6 participated in this program have been fully
7 followed for the program by the broadcasters
8 and the NAB, which combined to underwrite the
9 costs of this program.

10 There are 156 graduates of the
11 program, and with you today you see the
12 Broadcast Leadership Training Program for this
13 year. Would you all please stand?

14 (Applause.)

15 MS. SUTTER: Also with them is
16 Michelle Duke, who is the Vice President of
17 the NAB Education Foundation, who is my
18 partner in making this program exist. It is
19 a program not only to provide the information
20 for women and minorities to know how to do
21 deals, but it is taught by all the industry
22 executives that are the people they will need

1 to know when they do deals. The bankers, the
2 brokers, and all of the group heads come and
3 talk to this class, and provide them with the
4 knowledge they need to be able to go out and
5 do deals.

6 We have some 23 owners as a result
7 of this program, and, also, that have grown
8 while they've been in the program, and over 30
9 percent of its graduates have been voted since
10 their participation, so we welcome them. This
11 is the next group of owners that you'll see by
12 the end of this year. Thank you.

13 CHAIRMAN RIVERA: Thanks so much,
14 Diane. And I would like to introduce the
15 person who first chaired this Committee under
16 Chairman Powell, and that is Julia Johnson,
17 who is here with us today. And she's brought
18 with her several elected and appointed
19 officials, local appointed officials. And if
20 you would like to introduce them, or have
21 Nicole introduce them, whatever you'd like,
22 Julia. Would you join me in giving Julia a

1 hand?

2 MS. JOHNSON: Thank you, Chairman.
3 And thank you for the opportunity to be here
4 today. We'll talk more about our report later
5 in the agenda, but we're really excited about
6 this opportunity, particularly at a time like
7 this.

8 The representatives that we have
9 with us who will be present this afternoon at
10 the luncheon are appointed and elected
11 officials from the various constituents of
12 state legislators, legislative women, mayors,
13 as well as county officials. So, I would not
14 do great diligence by saying what areas they
15 are from, so I'm going to actually ask them to
16 stand, and to -

17 (Applause.)

18 MS. JOHNSON: Just have them to
19 say their name, and who they represent.

20 MS. LYNUM: I'm Commissioner Daisy
21 Lynum, Orlando, Florida, President of the
22 National Black Caucus of Local Elected

1 Officials, the National League of Cities.

2 MR. SMYRE: I'm Calvin Smyre,
3 State Rep from Georgia. I'm President of the
4 National Black Caucus of State Legislators
5 based here in Washington, D.C, representing
6 600 legislators in 42 states.

7 MS. JOYNER: I'm Arthenia Joyner,
8 state senator from Florida. I'm the First Vice
9 President of the National Organization of
10 Black Elected Legislative Women.

11 MS. HUDSON: I'm Heather McTeer-
12 Hudson. I'm the Mayor of Greenville,
13 Mississippi, and President of the National
14 Conference of Black Mayors.

15 (Applause.)

16 MS. JOHNSON: Thank you, Mr.
17 Chairman.

18 CHAIRMAN RIVERA: Thank you, and
19 welcome all. We're very glad that you've
20 chosen to join us this morning.

21 Is the FCC's Chief Diversity
22 Officer here?

1 MR. LLOYD: I'm right behind you.

2 CHAIRMAN RIVERA: I would like to
3 introduce to all of you who have not met him,
4 my good friend, Mark Lloyd, who has recently
5 been appointed the FCC's Chief Diversity
6 Officer. Mark, we look forward to working with
7 you. Welcome.

8 (Applause.)

9 CHAIRMAN RIVERA: All right. To
10 business. Can you confirm that we have a
11 quorum, Barbara?

12 MS. KREISMAN: Yes, I can.

13 CHAIRMAN RIVERA: We have a
14 quorum, so we can do business.

15 I'm going to call first on Toni
16 Bush, who is the Chair of the Subcommittee on
17 Telecom and Broadband Issues Subcommittee.
18 There are two recommendations that that
19 Subcommittee is bringing to you for your
20 consideration today. I do intend to bring
21 those up for a vote. And, Toni, thank you and
22 your Subcommittee for all the great work

1 you've done. The floor is yours.

2 MS. BUSH: Thank you. I want to,
3 again, thank the FCC for reinvigorating the
4 Diversity Committee, and giving me an
5 opportunity to participate. And I also want
6 to especially thank Henry Rivera as the Chair
7 of the Diversity Committee, Barbara Priceman,
8 and Jamila-Bess Johnson for their many gentle
9 reminders for our Committee to stay on track.
10 And it was very helpful to me, because I could
11 forward them on to my Committee to keep
12 everybody going. But I also want to thank
13 Daudeline Meme, and Rick Hindman from my
14 office for helping the Committee, and helping
15 us pull this together. Daudeline would be
16 here, but she's home with her new daughter,
17 Samantha, who's two weeks old. And, of
18 course, I want to thank my Committee members
19 who worked very hard over the summer into
20 August, over the Labor Day weekend helping
21 pull these proposals together. And,
22 particularly, Steve Hillard for taking the

1 lead on the Designated Entity proposal, and
2 James Assey, and Loretta Polk from NCTA for a
3 lot of their suggestions on the broadband
4 proposal.

5 So, both proposals were approved
6 by the Committee, and I think I should just
7 remind everybody that they don't necessarily
8 reflect the individual views of everybody on
9 the Committee, but the Committee did work very
10 hard on them.

11 Going to the proposals, the
12 Designated Entity proposal is actually a
13 slightly revised proposal that has previously
14 been approved by the Diversity Committee. And
15 I think that the changes, I think, were really
16 just to update it. There weren't really
17 substantive changes in it. The main focus, I
18 think, of the proposal is listed, that we're
19 basically urging the Commission to review and
20 initiate a new proceeding to look at the
21 Designated Entity rules.

22 As many people know, there was a

1 lot of concern about some of the provisions
2 that were put in place, and concern that they
3 were deterring investment in small business,
4 and minority-owned entities. So, the
5 resolution that we have here which -- I mean,
6 the proposal everybody has in their packet,
7 but I'll review the resolution, that we urge
8 the Commission to not impose new restrictions
9 or limitations on who can invest in Designated
10 Entities for the next auction, to issue a
11 further notice of proposed rulemaking seeking
12 further comment on reform proposals that have
13 been put in place. And to reaffirm for all
14 FCC auctions the enforcement of the FCC's
15 existing rules, including the expeditious
16 qualification reviews consistent with speedy
17 license awards, compliance audits, and unjust
18 enrichment penalties for violation of the
19 Commission's rules.

20 Does anybody have any questions on
21 this proposal?

22 CHAIRMAN RIVERA: Let's get a

1 second first. The Chair will accept that
2 recommendation of the Subcommittee as a
3 motion. Should we get a second for
4 discussion?

5 MR. SCHWARTZMAN: Second.

6 CHAIRMAN RIVERA: Andy Schwartzman
7 seconded that. All right. We're now open for
8 discussion and questions for Toni and the
9 Subcommittee. No questions? Are you ready
10 then for the vote? The Chair takes it that
11 you are. All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN RIVERA: Motion carries.
14 Thank you, Toni.

15 MS. BUSH: Thank you very much.
16 Moving on to our recommendations for the FCC
17 as it works to craft its National Broadband
18 Plan. Essentially, obviously, we focused on
19 serving under-served populations, and we have
20 four recommendations for the Commission to
21 consider. One, the Commission should consider
22 modifying the Universal Service Fund's

1 Lifeline and Linkup programs to help eligible
2 low-income consumers establish and maintain
3 service. We also think the government should
4 look at the success of the Enhanced Tribal
5 Lands programs, and create similar programs
6 for broadband. We also would like the
7 Commission to solicit input from the Tribal
8 communities in the United States on other
9 proposals that might be helpful.

10 The second proposal is, the
11 Commission should review the E-Rate program,
12 which provides affordable access to
13 telecommunication services for schools and
14 libraries, particularly those in rural and
15 economically disadvantaged areas. The third
16 proposal is, the government should consider
17 incentives for adoption of next generation
18 high-speed services at affordable prices. And
19 then the final proposal is that the government
20 should partner with national and local non-
21 profit organizations, as well as community
22 institutions, to build awareness, and foster

1 demand for broadband.

2 We think it's important that the
3 Commission look at existing programs that are
4 successful. We have attached to this just a
5 few programs as part of the Broadband Plan.
6 Many people have submitted examples of
7 programs all over the country, so we urge the
8 Commission to recommend to Congress that we
9 consider expanding some of these programs that
10 have already been successful.

11 CHAIRMAN RIVERA: All right. Is
12 there a second to that motion?

13 (Seconded.)

14 CHAIRMAN RIVERA: Seconded. All
15 right. Any questions, or discussion? Yes,
16 Karen?

17 MS. NARASAKI: Yes. I served on
18 the Subcommittee. I wanted to thank Toni for
19 her great leadership.

20 One of the issues that came up for
21 me after the work was done was really trying
22 to encourage the Commission to look at access

1 for people with disabilities. I think it's an
2 area that we should probably pay a little bit
3 more attention to, as we build out the
4 broadband access issues.

5 CHAIRMAN RIVERA: All right.

6 Well, we can take that back to the
7 Subcommittee. Obviously, we're just getting
8 started, so there'll be another opportunity to
9 bring that up as a separate motion when the
10 Committee brings up additional recommendations
11 to the -- if that's okay with you.

12 MS. NARASAKI: Yes.

13 CHAIRMAN RIVERA: All right.

14 Great. Anything else? Are we ready for the
15 question then? All in favor of these
16 recommendations, please say aye.

17 (Chorus of ayes.)

18 CHAIRMAN RIVERA: Opposed? Same
19 side? Motion carries. Thank you very much.
20 Terrific work, Toni, and thank you, again, to
21 your Committee. Just very well done.

22 Okay. We're going to move on to

1 the Constitutional Issues Subcommittee. As
2 Chairman Copps mentioned in his opening
3 remarks, we were tasked with coming up with
4 these particular recommendations by the
5 Chairman. He wanted them at our first
6 meeting, which we made that deadline. So,
7 David, thanks to you for your leadership, and
8 to your Committee for all their hard work.
9 And the floor is yours.

10 MR. HONIG: Thank you, Mr.
11 Chairman. I want to first acknowledge
12 especially the assistance that we received
13 from subject matter experts this year, and in
14 the previous year that the Subcommittee worked
15 under the name Eligible Entity Subcommittee,
16 particularly, Tom Henderson of the Lawyers
17 Committee for Civil Rights, and Matthew Berry,
18 former General Counsel of the Commission, as
19 well as a number of officials of educational
20 organizations, as well as especially our
21 rapporteur, Jocelyn James, who is a Fellow at
22 MMTC, and held the pen for these

1 recommendations, Jamila Bess Johnson, and
2 Barbara Kreisman of the Commission Staff,
3 particularly, as well, and the members of the
4 Subcommittee who worked so hard, and put in so
5 much labor and creativity, particularly, Karen
6 Narasaki for her copious knowledge of the
7 Fifth and Fourteenth Amendment, and Geoff
8 Blackwell for his contribution of the section
9 on Native Americans that's taken up in these
10 reports.

11 You have the report on the Adarand
12 Studies before you. A bit of history, after
13 Adarand was decided by the Supreme Court in
14 1995, then General Counsel, later Chairman
15 Kennard, made the decision that the -- in
16 order to satisfy what could then have been
17 regarded as the requirements of a review court
18 under strict scrutiny, it would be necessary
19 for the Commission to develop a more granular
20 factual record on the question of diversity,
21 and the question of remediation, particularly,
22 whether the Commission should try to remedy

1 the consequences of -- that could be
2 attributable to its own past involvement,
3 ratification, collaboration with, validation
4 of discrimination in the past. And,
5 consequently, the Commission undertook five
6 studies, and a sixth one that was submitted to
7 it. Those studies were released on December
8 12th, 2000. They were refreshed, somewhat, in
9 a Section 257 inquiry initiated by Chairman
10 Martin in 2004, were reviewed again, but not
11 in any great detail, in studies undertaken as
12 part of the FCC's Media Ownership proceeding
13 in 2007, and here we are today.

14 You have before you, first, the
15 Adarand recommendation, which recommends that
16 seven studies be undertaken, six of them being
17 basically updating of existing studies that
18 had been done from 2000, and a seventh one,
19 which is listed first on the text here on page
20 3 on broadband, which really goes to kind of
21 why the Subcommittee felt it was necessary to
22 do these studies.

1 One reason, of course, is that a
2 court might look at the data in the earlier
3 studies, and say that this is a fast evolving
4 field. The raw data sometimes dated from as
5 far back as 1996, or 1997. That's ancient
6 history. And, therefore, the studies are
7 stale, and can't be relied upon for
8 constitutional review. But even were there no
9 issue of the staleness of studies for
10 constitutional purposes, we would want the
11 Commission to do them anyway, simply because
12 it's important to have a record based on
13 current data, and because longitudinal review
14 then becomes possible from a baseline that
15 might be begun here. That's just good policy
16 making.

17 Second, I wanted to emphasize how
18 the Subcommittee views the question of race
19 neutrality. As we know, the test for
20 surviving strict scrutiny, as the Supreme
21 Court has articulated it, this is the Cliffs
22 Notes version, is that a program that is race-

1 conscious must first serve a compelling
2 governmental interest, the means used must be
3 narrowly tailored to the effectuation of that
4 interest. And, in recent cases, particularly
5 Parents Involved three years ago, essentially,
6 all race-neutral means must be first attempted
7 and have failed before, as a last resort, an
8 agency in this case could turn to best
9 possible race-conscious measures.

10 What this means is that part of
11 what must ultimately be done is to -- is for
12 the Commission to undertake race-neutral
13 measures, many of which have been proposed in
14 various proceedings, and quite a number of
15 which have been proposed by the Diversity
16 Committee, and try them in good faith,
17 understanding that it may be that these
18 measures prove to be quite effective. We
19 don't know, and we have no preexisting bias in
20 favor of one approach or the other. We just
21 want whatever approach is best. And if it's
22 possible to promote diversity, and provide

1 remediation through race-neutral measures,
2 that's that much better. So, the studies would
3 be valuable, irrespective of whether race-
4 neutral, race-conscious measures are used,
5 simply because it's good policy making.

6 We don't, in this recommendation,
7 go so far as to express an opinion on, or
8 concede that these studies are necessary to
9 satisfy any constitutional standard. Those
10 standards, as we know, are evolving, and there
11 are strong feelings as to whether they're
12 appropriate. What we are doing is saying that
13 for the purpose of good policy, and in the
14 event that they should be necessary for
15 constitutional purposes, the Commission would
16 be well-advised to undertake them. And, Mr.
17 Chairman, I commend the report on Adarand
18 Studies to the full Committee for its
19 consideration.

20 CHAIRMAN RIVERA: All right. The
21 Chair will take that as a motion. Is there a
22 second?

1 (Seconded.)

2 CHAIRMAN RIVERA: Thank you. Are
3 there any questions?

4 COMMISSIONER COPPS: Can I ask a
5 question?

6 CHAIRMAN RIVERA: Yes, indeed.

7 COMMISSIONER COPPS: I wonder if
8 you could give us any idea of what kind of a
9 workload attends this. Certainly, we
10 understand the necessity to have the kind of
11 legal justification to sustain this in court.
12 On the other hand, I'm motivated, as I said
13 earlier, about the need to get something done
14 soon. We've got an economy that will
15 hopefully be starting to bounce back before
16 too long. Maybe some opportunities will open
17 up there for minorities and women. We
18 certainly hope so, and we certainly hope we'll
19 have some incentives ready to go by that time.
20 What are we looking at here, from
21 the standpoint of Commission resources, time
22 spent? Particularly, you talked about some of

1 these studies would be updated. Is that a
2 massive overhaul? How do you look at what
3 exactly the challenge is, and how long it
4 would take to discharge it?

5 MR. HONIG: When Chairman Kennard
6 undertook this process, and got it funded in
7 1999, I think, this studies were completed in
8 less than a year. The total budget for those
9 studies, which, of course, were done from
10 scratch, was in excess of \$1 million, and some
11 of these would just need to be updated. I
12 don't know that quite that much would be
13 needed this time; although, there is one new
14 study that's proposed. And, again, it just
15 comes to a question of will, everything is, as
16 Henry Geller says, compared to what? And what
17 will \$1 million buy, and is this worth it?

18 The studies would need to
19 certainly be peer reviewed, even though the
20 courts don't say that. That's just good
21 policy making, to have them be peer reviewed.

22 CHAIRMAN RIVERA: Debbie?

1 MS. LEE: At the last meeting, we
2 talked about how nothing had been done for
3 eight years, and that it might take as long as
4 two years to complete this type of study. So,
5 that news was a little depressing. It sounds
6 like you're saying it may be done quicker than
7 that. And, I guess my question is, did the
8 Committee look at any alternatives, so that we
9 wouldn't have to go through updating studies,
10 and doing new studies? Is there any other
11 alternative that may, to Commissioner Copps'
12 point, make us able to proceed quicker?

13 MR. HONIG: Well, certainly, a
14 tribunal will regard with greater gravitas and
15 credibility a study done by the expert agency,
16 or contracted by the expert agency under an
17 RFP. That was the way the Kennard Commission
18 proceeded. It contracted out five of these
19 studies, and it received from another source,
20 from a university, a sixth one, and evaluated
21 it later. There was a peer reviewed study
22 done to supplement that sixth one. That tends

1 to be what the courts prefer.

2 Two years, it's possible that from
3 the date that funds are received, until the
4 date the Commission might vote, looking at the
5 way the Commission has dealt with these issues
6 before, that's probably a realistic guess. I
7 think the studies, themselves, can be done in
8 less than a year. You always build in a fudge
9 factor, because the Commission, believe or
10 not, can't always make up its mind quickly to
11 do things. Trying to be polite, but that's --
12 let's build that in, and just not get any
13 unrealistic expectations about whether this
14 can be done tomorrow.

15 MR. SCHWARTZMAN: I want to
16 express the view, and this is the position I
17 took in the discussions within the Committee,
18 that the Committee should advocate, and the
19 Commission should be taking a very aggressive
20 position with respect to establishing rules in
21 this area. This is a, to put it mildly, a
22 difficult judicial climate within which to

1 work, and there is some feeling of pressure
2 to go easy, or to not really extend as far as
3 possible. I'm not of that view. But a
4 correlative of wanting to take a strong
5 position to promote diversity is that these
6 studies have to be rock-solid. And I think it
7 is important to take the time that's
8 necessary, and not to try to do it on the
9 cheap. And if it means getting some help from
10 Congress in terms of some appropriations, or
11 whatever, I think it is important that these
12 studies be done right. This is the bedrock of
13 making this stand for the long-term.

14 CHAIRMAN RIVERA: Very good.

15 MR. GOODFRIEND: Just a question
16 of clarification from David Honig. This body
17 just adopted a recommendation on a Designated
18 Entity proceeding. The D.C. Circuit Court of
19 Appeals explicitly ruled that the Designated
20 Entity rules, as revised post Adarand, did not
21 raise any Adarand issues. Therefore, is it
22 your opinion that some of these efforts can

1 proceed in parallel tracks simultaneously with
2 your efforts, our efforts to build a better
3 record under the Adarand Studies? In other
4 words, the Adarand Studies are not a condition
5 precedent to proceeding on some of our other
6 initiatives.

7 MR. HONIG: That's right. We
8 absolutely can proceed while the Commission
9 considers other means that are race-neutral.
10 Certainly, the fact that studies are
11 undertaken both helps inform existing efforts
12 as they are done, and also helps to allow for
13 any potential re-calibration of them should
14 someone raise the question of whether they may
15 unintentionally embed any race-consciousness.

16 I would note also that one of the
17 five studies that's being recommended, and the
18 recommendation uses the word "disparity
19 studies", which is kind of a constitutional
20 lawyer term of art. And, actually, these
21 studies relate not just to disparities, but
22 the history, policy, technology, and entry

1 barriers. And one of them, the one numbered
2 five, "Auction Utilization Studies", would
3 encompass the question of the impact of the
4 Designated Entity Rules, both before the
5 changes that remained in 2006, and afterward,
6 to assess whether those changes may have had
7 a disparate impact, and whether that impact
8 may have tended to peel the sore off of past
9 discrimination.

10 CHAIRMAN RIVERA: Any questions?

11 MS. LUCEY: More in the line of
12 comment than a question, but I would say that
13 I agree with Andy's point, that I think it's
14 very important that we follow-up on the
15 studies, and make sure that they are, indeed,
16 based on solid data, and give us a good
17 foundation for being able to move forward if
18 we're going to have sustainable rules. I
19 think that's an essential.

20 I also wanted to emphasize here
21 that the Subcommittee's view on this included
22 not just race, but women, but gender, as well,

1 which I think is important to emphasize as
2 we're going forward, that this not just be
3 focused as a race initiative. I think that
4 that's -- that women are also part of the
5 equation, as we discussed it.

6 And, finally, I wanted to also
7 mention and emphasize, as well, that this is
8 not just looking back. This is looking
9 forward to the new technologies as we're going
10 forward. I think that, particularly, the
11 broadband element of this is something that's
12 important, that we can't always be trying to
13 look towards the past, but we should be
14 looking towards the future, and making sure
15 that the kinds of opportunities that we're
16 seeking to make available here are on a going
17 forward basis, and not just simply trying to
18 look where we've been. So, I wanted to
19 specifically commend the work of the
20 Committee, and say that I think that it was a
21 very well done effort, and thank them very
22 much.

1 CHAIRMAN RIVERA: Thank you for
2 that intervention. Really wise words. We
3 appreciate the reminder, particularly.
4 Anything else? Are you ready for the
5 question? All in favor say aye.

6 (Chorus of aye.)

7 CHAIRMAN RIVERA: Opposed? Motion
8 carries. Thank you very much.

9 Now, David, we're going to move on
10 to the Full File Review recommendation.

11 MR. HONIG: This recommendation
12 which you have before you considers whether
13 there is a paradigm that the Commission could
14 adopt and apply to particular context,
15 particular types of proceedings or rules right
16 now that might result in the use of a
17 definition of eligible entities that would be
18 less dilute in its impact on minorities and
19 women than the current Small Business Standard
20 that's used now.

21 Full File Review is a concept that
22 originated in the context of higher education.

1 Any of us that went to college, or grad
2 school, or law school, or has children who
3 did, knows that those institutions look at
4 statistics first. What was your grade point
5 average? Where did you rank in class? What
6 was your score on your SAT? And then they
7 also look at whether your parents or
8 grandparents went to the institution, and what
9 did you score when you were playing football?
10 It looks at those things only, and, thus, is
11 assembles a class.

12 In four states where the voters
13 passed resolutions barring use of race-
14 conscious measures by state government, it
15 seemed to be that the exclusion of any
16 consideration of race or disadvantage
17 attributable to race would result in a great
18 diminishment of the participation particularly
19 of African Americans and Hispanics, and other
20 groups, as well, in certain institutions,
21 especially high-profile Class I institutions.
22 Those states are Texas, Michigan, Washington,

1 and California.

2 Each of those states then adopted
3 a process colloquially known as "Full File
4 Review", which was intended to -- as a narrow
5 approach, which, in some cases, was a race-
6 conscious approach, or could be regarded as
7 that, in some cases it is not, look at whether
8 there are factors about an individual person
9 that in addition to just their test scores, or
10 grades, and so forth, might make them good
11 candidates for that institution in terms of
12 contributing to its intellectual and cultural
13 diverse environment, or simply serving the
14 needs of the state in producing a workforce in
15 which everyone has an opportunity to fully
16 realize their intellectual, creative, and
17 entrepreneurial potential.

18 We started with the understanding
19 that a Full File Review program can be either
20 race-conscious, or race-neutral. We chose to
21 design one, which was race-neutral. Last
22 year, this Committee considered and voted out

1 without objection a recommendation on October
2 28th, 2008, on Full File Review, that,
3 basically, developed in 44 pages, the
4 constitutional underpinnings, and how this
5 would be designed. But what we did not do in
6 that Subcommittee work last year was set out
7 how specifically that paradigm, once agreed
8 to, would be applied and implemented. And
9 that's what this recommendation undertakes to
10 do today.

11 First, I want to emphasize that
12 because the approach we've chosen to recommend
13 is race-neutral, one might ask well, does it
14 involve race at all? How does race fit into
15 this? How do you know that it's going to have
16 an impact? Well, in 1976 in *Washington v.*
17 *Davis*, the Supreme Court said that just
18 because a government program tends to have a
19 disparate impact unintentionally on a racial
20 group, doesn't make it unconstitutional. And
21 that's true, irrespective of whether the
22 program tends to benefit, or not benefit its

1 outcome minority groups, or not.

2 And that means that it's possible
3 to consider, for example, the paradigm that's
4 been framed in this report, is whether an
5 individual person coming to the Commission
6 either as a decision maker in a company, an
7 applicant, or as an individual, has overcome
8 disadvantages, the overcoming of which is
9 predictive of success in that Commission
10 program. So, it's very closely tailored to
11 the purpose of the program. And it speaks not
12 to whether a person is of a given race or
13 gender, or even whether the person has
14 experienced disadvantage stemming from the
15 experiences that commonly attend being of that
16 race or gender. But, rather, whether the
17 individual person, through their own mettle
18 and initiative has overcome those
19 disadvantages, through their own initiative.
20 So, what's being evaluated here is initiative,
21 and the disadvantage does not have to be
22 disadvantage stemming from the experiences of,

1 for example, racial segregation. Those
2 disadvantages would be considered equally to
3 the overcoming of other kinds of
4 disadvantages, such as living in poverty, such
5 as having had military service, been injured,
6 living in certain geographic areas of the
7 country where opportunities are few, and a
8 number of other types that are enumerated
9 here. That's twice removed, at least twice
10 removed, from race.

11 Now, there are a couple of
12 contexts in which this paradigm could be
13 applied. One is, what we in the FCC world
14 refer to as the non-comparative context, where
15 someone is the only applicant, for example,
16 for a license, or for a waiver, or for an
17 extension of time to comply with the rule,
18 because there are issues relating to access of
19 capital. It takes more time, the Commission
20 has found on five occasions, for people of
21 color to raise money. That might be, we
22 thought, the right place to start, because in

1 the application of any new idea, any new
2 paradigm, there will always be a few growing
3 pains. There will always be some errors made
4 that is good to correct, so it's better to
5 make them and correct them, when they're
6 applied, such that it's just one applicant,
7 and there's no one who is going to be able to
8 truthfully assert I would have won this, but
9 for the fact that you implemented this program
10 wrong, and, therefore, I've been injured.
11 Let's get it right first, then turn to the
12 other context in which this could be used,
13 which is the comparative context, where
14 there's -- it's like musical chairs, or it's
15 like Ashbacker. There's one resource, and
16 more people that want it, than there is the
17 resource.

18 In those scenarios, for example,
19 how many points does one get, or does one get
20 a credit in order to win, as in the Designated
21 Entity program, or the former Comparative
22 Hearing Rules for Broadcasting, or simply

1 easing the process to make it through the
2 first hurdle, or barrier that one must
3 overcome to be considered, if the program
4 requires consideration on a completely neutral
5 basis for the final round. Simply, who gets
6 into the final round for that kind of
7 consideration.

8 If you take a look at the report,
9 itself, in terms of what it does, what we're
10 recommending first is that, and I especially
11 want to thank Geoff Blackwell for this
12 section, is that Native Americans, because of
13 the relationship that federally recognized
14 tribes have with the U.S. government, which is
15 the relationship between sovereign entities,
16 it's government-to-government, there actually
17 is no reason why the sort of neutrality or
18 constitutional issues that we just discussed
19 in the Adarand context would apply to them.
20 They're eligible right now for review. We
21 recommend that simply because it's wise to do
22 this, because of the extreme extent of

1 disparities that they experience, that
2 irrespective of how one comes out on whether
3 they should be treated with race neutrality,
4 they should still receive such advantages as
5 might be derivable through the use of Full
6 File Review.

7 We're also proposing a series of
8 specific procedures which are intended to have
9 first, of course, a meaningful impact, which
10 would be inexpensive, transparent, user-
11 friendly, expeditious, clear and consistent,
12 with minimal need for the Commissioners'
13 involvement in the day-to-day operations that
14 would be done at the bureau level. These are,
15 in fact, precisely the operational criteria
16 that Chairman Genachowski expressed in his
17 first address to the staff here in this room
18 a month or so ago.

19 The premise we discussed in terms
20 of social disadvantage and its multiplicity of
21 sources, and how claims of overcoming those
22 disadvantages are assessed, to some extent

1 unavoidably. They might be subjective, but
2 there would be reviewers who would have
3 expertise and training on how to evaluate
4 them.

5 It's contemplated, also, that
6 there be some means, such as an audit program
7 to ensure the integrity of Full File Review,
8 and to be sure that there is no gamesmanship,
9 which has sometimes, unfortunately, proved
10 fatal, or damaging to other kinds of programs
11 that the Commission and others have adopted in
12 the past.

13 We're also proposing a system of
14 pre-certification and re-certification. In
15 effect, even before someone might choose to
16 apply for a license, or a waiver, or enter a
17 comparative context, be able to be certified
18 as presumably eligible for consideration under
19 Full File Review, because that then becomes a
20 coin, an attribute of value that an
21 entrepreneur can take to investors, can take
22 to lenders, and use to help overcome some of

1 these barriers to the raising of capital.

2 It also proposes a system for what
3 happens if someone feels that they've been
4 determined ineligible incorrectly. ALJs, of
5 which the Commission has two, or a Special
6 Master would do that. And, finally, it
7 proposed, and I think this is just good
8 government, and it's consistent with what
9 Chairman Genachowski has said he wants to
10 apply to all Commission programs, is that
11 there would be annual longitudinal study of
12 this program, as it's applied in any context,
13 so that the Commission can then review the
14 resulting data to ensure compliance with
15 procedures set by the agency, and with the
16 law, and re-calibrate it to ensure both its
17 continued integrity, and it's continued
18 effectiveness.

19 Mr. Chairman, submit this
20 resolution for -- this recommendation for the
21 Committee's consideration.

22 CHAIRMAN RIVERA: I take that as a

1 motion. Is there a second?

2 (Secoded.)

3 CHAIRMAN RIVERA: All right. We're
4 now open for discussion and questions.

5 COMMISSIONER COPPS: Question.
6 Has any state or entity developed a race-
7 conscious Full File Review process?

8 MR. HONIG: Texas, Washington
9 State, California, and Michigan have done so
10 in the higher education context. There is
11 good faith disagreement as to whether those
12 programs are race-conscious, or race-neutral.
13 We have taken great care to design a paradigm,
14 which, unquestionably, will be race-neutral.

15 CHAIRMAN RIVERA: I thought you
16 wanted to say something else. Anybody else
17 want to ask a question?

18 Just to reiterate something that
19 David had said. This Committee has already
20 sent to the Commission a recommendation that
21 it proceed on a Full File Review, to adopt a
22 Full File Review process. This recommendation

1 we're voting on today puts a little flesh on
2 those bones in terms of suggesting to the
3 Commission ways that it might do that, so
4 that's really what we're voting on.

5 Are you ready for the question
6 then? Yes? All in favor, say aye.

7 (Chorus of aye.)

8 CHAIRMAN RIVERA: Opposed? Motion
9 carries.

10 Well, thank you. To borrow a
11 phrase from Chairman Copps, this is very
12 exciting. I think we really did some
13 wonderful things here, and I hope that, in
14 fact will bear fruit with the Commission.

15 COMMISSIONER COPPS: Yes, and I
16 would just like to really urge your further
17 attention on any other interim measures that
18 are there. Ralph and I used to work for a
19 fellow who was fond of citing the adage
20 justice delayed is justice denied. I don't
21 see this as writing on a blank page, and we
22 don't know the effects of discrimination, and

1 all that. We know plenty right now, and we
2 certainly know enough to act.

3 I agree completely with what
4 you're saying about the need to really have
5 good studies, and to have a solid basis in
6 order to encourage sustainability in the
7 courts, but anything that we can do in the
8 interim, I think this is a huge step forward,
9 if we can get the Commission to adopt this
10 Full File Review, and do something to
11 Designated Entity rules, we could begin making
12 a difference now. And we need to begin making
13 a difference now.

14 CHAIRMAN RIVERA: All right.
15 We're going to turn now to an interim report
16 from our Mass Media Issues Subcommittee. And,
17 Diane Sutter, you have the floor.

18 MS. SUTTER: Thank you. First,
19 our thanks to both Henry and Barbara for their
20 support and timeliness of reminders to keep
21 the Committee moving in its positive
22 direction. I'd also like to thank Jacqueline

1 Clary, who has been our scribe for all of our
2 Subcommittee meetings. She is loaned to us
3 from MMTC for this. We thank MMTC and
4 Jacqueline for her work. And I want to also
5 thank the members of the Subcommittee, who
6 have been working diligently over the summer
7 to come up with their various areas.

8 The first thing that the Committee
9 addressed was how we could be most effective
10 in being focused in the activities that we
11 did. And, toward that end, the Committee
12 reviewed all of the various issues that might
13 fall under this Subcommittee, and determined
14 that there were three that were outstanding,
15 that should get our immediate attention and
16 focus, and those were EEO, PPM, and funding
17 for acquisitions, that they were the three
18 that we felt were the most immediate and
19 important, in need of our attention.

20 Toward that end, the Committee
21 divided into task forces, with each one of
22 them being led by one of our members. And my

1 thanks to Jane Mago, who is chairing the task
2 force on EEO, to Jenny Alonzo, who is chairing
3 the task force on PPM, and to Susan Patrick,
4 who is chairing the task force on funding for
5 acquisitions.

6 The Funding for Acquisitions

7 Subcommittee has been working toward a
8 recommendation, which I will outline in a
9 minute. The EEO Subcommittee Task Force has
10 been looking at ways that we should address
11 enforcement of existing EEO questions, whether
12 there should be additional things that the
13 Commission might be doing to move that
14 forward, and, also, to look at what kinds of
15 things in the future we might want to
16 recommend to the Committee. They are
17 considering some recommendations now, and hope
18 to be able to provide more direction to the
19 full Committee in the near future.

20 The PPM Task Force has been
21 working with Arbitron, Nielson, and also the
22 MRC to identify how we can best make sure that

1 the rating services' methodologies, and
2 implementation do not in any way adversely
3 impact minority stations, which has been the
4 belief and result from what has happened with
5 the implementation of the PPM in the various
6 markets in which it has been done.

7 The Committee had a meeting with
8 the MRC, where they discussed how the
9 Committee worked, what the accreditation
10 looked like, and is following up with both
11 Nielsen and Arbitron to try and be able to
12 ascertain in what ways might we do a better
13 job of helping them through the Commission's
14 urging to be able to make sure that we are,
15 indeed, reflecting the marketplace as it is.

16 The Funding for Acquisitions Task
17 Force felt that we needed to address,
18 certainly, the dire financial crisis that has
19 befallen the country, as a whole, but,
20 certainly, our industry has been adversely
21 impacted, especially those smaller
22 broadcasters.

1 The larger broadcasters have been
2 able to acquire funding over the years at a
3 much easier level than smaller women and
4 minority-owned entities, simply because of the
5 size of the deals in many cases. It seems to
6 be much easier to get \$20 million than it is
7 to get two. And, as such, the challenges that
8 have come with that have meant that the larger
9 institutions, which have lended to larger
10 broadcasters meant that there was a dearth of
11 opportunity for lending to small deals, small
12 broadcasters, and women and minorities, in
13 particular.

14 As a result, many of the local or
15 regional banks have been approached by
16 broadcasters in an attempt to get them to fund
17 the opportunities that are in the local
18 communities. Their lack of understanding
19 about lending to a non-asset-based entity,
20 which most broadcast properties are, has
21 caused them to resist participating in
22 providing funding for broadcast acquisitions.

1 Many times they find the fact that your most
2 valuable entity and resources, your license,
3 for which you do not own, and, therefore,
4 there cannot be a secured interest in that.
5 And the very nature of the business itself,
6 there are not many assets to attach. And they
7 have found that challenging and troublesome.
8 However, we believe that there are a number of
9 ways that we can help these regional and local
10 banks to begin to understand how to lend to
11 broadcasters, and radio and television
12 stations going forward.

13 Part of what the Committee is
14 working on, and will be providing to the
15 Commission, is a list of resources,
16 informational packets, ideas on how broadcast
17 lending can be done, so that we can provide a
18 full informational resource bank to local and
19 regional banks to allow them to not only know
20 how other banks are doing it, but to give them
21 ideas about how it has been done in the past,
22 and how they might do it, to provide names,

1 and other resources of banks that have done
2 this, so that we can begin to take the
3 mystery, if you will, out of lending to these
4 entities.

5 The Committee is in the process of
6 not only providing an outline of what that
7 informational base should look like, but
8 developing those pieces of information,
9 whether it's how to work with getting a
10 secured interest in the proceeds of the sale
11 of a license, and other ways that broadcast
12 lending has been accomplished in the past, and
13 then providing opportunities to actually have
14 educational meetings, perhaps regionally,
15 through the FCC website, and a number of other
16 opportunities that would allow us to be able
17 to, hopefully, increase the amount of funding
18 that is available to broadcasters going
19 forward.

20 The process is underway now, and
21 there will be a recommendation with those, an
22 outline, and those materials being provided to

1 the Commission, hopefully, for their adoption
2 to be used, and ways in which we might
3 implement that going forward.

4 CHAIRMAN RIVERA: Thank you,
5 Diane. We appreciate that interim report, and
6 we look forward to recommendations from your
7 Subcommittee and the next meeting.

8 I'm wondering if the Committee
9 would indulge me and give a hand to our
10 Subcommittee Chairs. They've just been
11 working awfully hard. Thank you so much.

12 (Applause.)

13 CHAIRMAN RIVERA: All right. I
14 now call on Mr. Gusman to talk about the
15 Broadband Opportunities Coalition.

16 MR. GUSMAN: Good morning, Mr.
17 Chairman. I'm sorry, I'm looking at the
18 agenda. Is new business next?

19 CHAIRMAN RIVERA: Yes, but I'm
20 going to have these two pieces of new
21 business, and then I'll open it up for other
22 things. Thank you, Jim. Mr. Gusman.

1 MR. GUSMAN: Good morning, Mr.
2 Chairman, Commissioners, distinguished members
3 and guests. I have the distinct pleasure this
4 morning to introduce an exciting new
5 Coalition, the Broadband Opportunity
6 Coalition. And I believe that this is going
7 to make a real difference in the lives of many
8 people in communities of color across the
9 country. So, first of all, who are we?

10 We are the founding members. We
11 are four civil rights organizations, the Asian
12 American Justice Center, LULAC, the National
13 Council of La Raza, and the National Urban
14 League. And we are well supported by MMTC as
15 our counsel, and we have the Joint Center that
16 supplies us with policy support. We hope to
17 have other members to join us. We know that
18 the NAACP is going to be considering joining
19 formally next month, and we hope others, in
20 the civil rights community, will join us, as
21 well.

22 To explain why we believe this is

1 so important, I will indulge a personal story
2 at this point to tell you why I believe that
3 this can make a real impact on people's lives.
4 As a young boy, I grew up on the banks of the
5 Mississippi River. And for those of you who
6 are familiar with the Mississippi, when the
7 water is high in the spring, the ships seem
8 like they're floating in the sky, for those
9 who have the good fortune of being in the
10 beautiful city of New Orleans, and the
11 environment there around. And I used to watch
12 the ships floating in the sky, and I would see
13 the flags on the back of those boats. And I
14 would dream of visiting all of those far-off
15 lands that were represented by those boats.
16 And through a lot of good fortune, a lot of
17 hard work by my parents, and a lot of
18 opportunities that were afforded to me by
19 others, I was able to do so.

20 For me, when we look at that in
21 terms of what we're talking about with the
22 Broadband Opportunity Coalition, we're talking

1 about now giving that eye on the world to
2 others, and, also, opening the access to
3 opportunities to others in communities of
4 color. And I think that is an essential thing
5 in our time, because, whereas, in prior times
6 when I was young, it was simply to be able to
7 go to the river banks, now you have to go to
8 searching Google, and search across the
9 broadband in order to create opportunities for
10 yourselves. So, from that very abstract
11 concept, what are we actually doing, and what
12 do we wish to accomplish?

13 First of all, we, as a Coalition,
14 came together. We applied both for the
15 Adoption Grant, and for the Computer Centers
16 Grant, the last BTOP, Broadband Technology
17 Opportunity Program Grant, and we hope to be
18 very successful with that application, because
19 it was a culmination of a lot of hard work and
20 thought, again, with the aim of opening
21 opportunities to communities of color.
22 Because many of you around this room probably

1 realize, but just to indulge, also, for a
2 moment, but in communities of color, it is not
3 clear the need for the power of broadband.
4 And, therefore, there's a lot of convincing
5 that needs to be done in our civil rights
6 communities. And that is what is powerful
7 about the Coalition, that people coming
8 together realizing that across the Brown, and
9 the Black, and the Yellow divide, that there
10 are people who have similar issues, and that
11 working together, that we can accomplish a
12 great deal.

13 Beyond doing the Broadband
14 Opportunity Grant, we also filed comments on
15 deployment. And, from there, we hope to work
16 together on a number of content issues using
17 a shared services approach, saying that if we
18 have content, whether or not it's talking
19 about helping prisoners who need to find out
20 about green jobs, or other communities who are
21 disadvantaged find out about green jobs, that
22 we can come up with a better product, if we

1 work together.

2 And, we also think that it's
3 important to keep the focus on this issue,
4 and, therefore, the National Urban League, as
5 part of the Coalition, along with the Joint
6 Center, will be putting out a Broadband
7 Equality Index early next year.

8 What I'd like to signal is that
9 this Coalition is due to the vision and hard
10 work of a great number of people, including
11 David Honig, Rey Ramsey, and too many others
12 to mention. And it is their hard work and
13 determination that has brought us to this
14 point. And I hope to report in the future
15 through Marc Morial or myself about great
16 things that are happening in our communities.
17 Thank you very much.

18 CHAIRMAN RIVERA: Thank you, Mr.
19 Gusman. It sounds like a very worthwhile
20 initiative.

21 (Applause.)

22 CHAIRMAN RIVERA: Now, I'd like to

1 call on Dr. Turner-Lee to talk about the
2 afternoon's events.

3 DR. TURNER-LEE: Thank you to the
4 FCC Commissioners that are here, as well as
5 the Chairman of this Committee, and Committee
6 members, and guests.

7 We are excited at the Joint Center
8 for the work that we're doing in this area to
9 increase broadband adoption among minority
10 communities. And it is a great pleasure to
11 come behind Patrick, because I also want to
12 acknowledge his diligent work at the Urban
13 League of making sure that the Coalition has
14 stayed together and gelled around these types
15 of issues that were not formally on the meter
16 for many of the civil rights organizations.

17 For those of you that don't know,
18 and our esteemed CEO sits on this Committee,
19 the Joint Center has been engaged in a series
20 of policy recommendations, as well as credible
21 research in very significant, and emerging
22 areas in our country right now, those being

1 health care, climate change, and now media and
2 technology. So, we're excited about this
3 opportunity as a think tank to come forward
4 with some policy recommendations that
5 continues to bring coalitions of groups
6 together to get into the debate.

7 I'm going to show a couple of
8 slides, Chairman, just to illustrate some of
9 our points. And, as it was mentioned, I am
10 not going to give away the thunder, because we
11 invite all of the Committee members to a
12 luncheon immediately preceding this meeting.
13 And we've provided transportation for those of
14 you that would like to get there. That event
15 is going to feature the Chairman for a few
16 moments, but really Commissioner Copps, who
17 has been a longstanding advocate on behalf of
18 ensuring that this space is clearly defined,
19 and that people receive equitable access.

20 The report that is being released
21 today is in by no way a sole project that came
22 out of the Joint Center. This project,

1 "Broadband Imperatives for African Americans,
2 Policy Recommendations to Increase Digital
3 Adoption", really was an idea that was
4 cultivated through the legislators that you
5 met earlier today. The Coalition, as we spoke
6 of, is represented by the National Black
7 Caucus of State Legislators, the National
8 Organization of Black Elected Legislative
9 Women, the National Conference of Black
10 Mayors, and the National Black Caucus of Local
11 Elected Officials, in addition to the National
12 Association of Black County Officials. And
13 all of those organizations represent more than
14 3,000 elected officials at various levels of
15 government. And when we look at their
16 representation, what we will talk about this
17 afternoon, and I want to just share in a sound
18 bite here, that their recommendations are
19 about people, the people that they represent
20 in their districts, the people whose needs
21 that they are closest to, and the people who,
22 if we do not address issues related to the

1 digital divide, will be further left behind.

2 In a conversation that I was in
3 yesterday, there is an unintended digital
4 consequence, or a civil rights consequence if
5 we're not able to get people online in a
6 fashion that allows them to receive the
7 benefit of health care, education, employment,
8 and other verticals that improve quality of
9 life. So, why do we care about that? I'm
10 just going to show, Chairman, just a few
11 slides, just to sort of give a teaser as to
12 why we care about it.

13 Right now, the percent of internet
14 users by race and ethnicity, African Americans
15 are the slowest adopting group compared to
16 other groups. And, in addition to that, if
17 you look at internet, non-internet users by
18 family income, race, and ethnicity, lower
19 income African Americans, less than 20,000,
20 tend to be less likely to be online even more.
21 Okay. Second slide, third slide, fourth
22 slide.

1 Okay. So, I share this slide
2 because Commissioner Copps actually published
3 a report that was very profound to the Joint
4 Center, that if you're black, low-income, and
5 you live in a rural community, you're even
6 less likely to have access to broadband. So,
7 at the Joint Center, our interest is really
8 understanding why are people not adopting, and
9 what are the factors that are in place. In
10 our partnership with the Black Elected
11 Officials, their connection to people will
12 help us drive a realistic portrayal of what
13 all of us on this Committee, and in this room
14 care about when it comes to broadband adaption
15 by minorities. Next slide.

16 What we are offering this
17 afternoon, and what we have placed into this
18 report are three imperatives. And I just want
19 to share the imperatives without going deeply
20 into the policy recommendations that are
21 behind those imperatives. Again, we invite
22 you to the lunch. But the first imperative is

1 obvious, we must figure out ways to bring
2 broadband directly to consumers, especially at
3 public anchor institutions, community-based
4 organizations. And you'll find that we say in
5 the report that CBOs may be public barbershops
6 and beauty shops, may be faith-based, where
7 people congregate in that content, and within
8 the home.

9 In my prior work with One Economy,
10 we accelerated access to Public Housing, the
11 greatest leveler of getting broadband to
12 people by insuring that there's a broadband
13 connection in every unit of housing that
14 receives government subsidy, whether federal,
15 state, or local. Again, the Black Elected
16 State representatives represent those
17 constituencies, which is why this is even more
18 special.

19 Imperative two that will be
20 outlined in the report, next slide. Broadband
21 access must be coupled with relevant online
22 content, and digital literacy training that

1 nurtures a culture of use among African
2 Americans, and helps people value broadband as
3 an essential service that can improve their
4 lives.

5 We have a problem. Our non-
6 adopters do not understand the value
7 proposition. So, in this report from our
8 elected officials will be policy
9 recommendations to create the culture of use
10 that is needed to get more minorities, and,
11 essentially, others that are disconnected from
12 the internet online. And, last slide.

13 Imperative number three,
14 sustainable broadband adoption efforts must be
15 aligned with key areas, such as education,
16 health care, and employment that improve
17 quality of life for African American
18 consumers.

19 As the country develops the
20 National Broadband Plan, and as we're in the
21 midst of funding for broadband reinvestment,
22 it is important that we think of those key

1 verticals that matter to all of us. As a
2 nation, and you will hear this from the
3 elected officials from their mouth, and not
4 the Joint Center's mouth, if we miss this mark
5 this time around, what will we lose out on in
6 terms of opportunities for improving
7 educational opportunities for African American
8 students, improving health care connections
9 for seniors that are isolated, employment
10 opportunities where many of the
11 representatives are in districts of high rates
12 of ex-offenders, who are struggling with re-
13 entry efforts. So, how can we use broadband
14 to ensure that those verticals are met? And
15 we will talk about that in the report, as well
16 as at the luncheon. So, I share that in the
17 last slide.

18 For those of you that may not be
19 able to attend the luncheon, if you could do
20 the last slide, we're using technology, so a
21 full download of the report will be available
22 at those websites after the event. But I

1 share that, Chairman, and Committee members,
2 and Commissioners, as a way for us to look at
3 how do we ensure that African American
4 consumers get this? And what do we need to do
5 on the side of, and I'm going to just defer to
6 my friend here, the Coalition, on the side of
7 legislators, and others to move the meter on
8 broadband adoption in this country. So, we
9 will, again, go into details about the policy
10 recommendations, but we thank you for this
11 opportunity to share this data, and we look
12 forward to this being an ongoing conversation
13 as these Elected Officials are invited to the
14 table, as we craft out one of the biggest and
15 ambitious plans of creating a National
16 Broadband Plan for the country.

17 CHAIRMAN RIVERA: Thank you very
18 much, Dr. Turner-Lee.

19 (Applause.)

20 CHAIRMAN RIVERA: We look forward
21 to hearing more about it this afternoon.

22 Now, Jim, did you have some new

1 business?

2 MR. WINSTON: What it was is
3 basically a comment of an article that was in
4 the Wall Street Journal on Friday. And it was
5 some major lenders to the broadcast industry
6 who have foreclosed on a number of broadcast
7 companies, and are taking control of them. And
8 the lenders were complaining about the
9 Commission's Attribution Rules and Foreign
10 Ownership Rules, suggesting that that was a
11 barrier to them taking over more broadcast
12 properties.

13 This has been a concern to NABOB
14 for some time, because we have a number of
15 members who are experiencing financial
16 difficulties because of the current recession,
17 because of problems with PPM. And we have
18 been concerned about the potential loss of
19 diversity in the broadcast industry, because
20 of banks being very aggressive in foreclosure
21 activities against companies that are having
22 difficulties.

1 In previous recessions, if you had
2 difficulty with your bank note, and you go
3 back to your lender, work out an extended
4 payment plan, life goes on. The lenders are
5 being recalcitrant in today's recession, and
6 are unwilling to renegotiate loans. And,
7 instead, are putting more and more companies
8 into foreclosure, taking over, and, in some
9 cases, forcing companies to go to bankruptcy
10 court and file Chapter XI to obtain relief.

11 This has been a matter that NABOB
12 has taken up with some members of Congress in
13 recent months. And when I read that article
14 on Friday, I got the distinct impression that
15 the banks were initiating their own initiative
16 to try to get a greater control of the
17 broadcast industry than the Commission's rules
18 currently allow. And my concern was that they
19 were going to be coming to the Commission with
20 some proposal for allowing relaxation of the
21 Attribution Rules, so they could control more
22 stations. And we're talking banks, hedge

1 funds, a lot of different private equity
2 players. And I know -- I'm sorry Commissioner
3 Copps is not here, because he had, about a
4 year ago, two years ago, he expressed concern
5 about the great impact of private equity in
6 terms of the Broadcast Attribution Rules, and
7 to what extent our rules were being
8 circumvented by lenders that are gaining a
9 much greater footprint in the broadcast
10 industry. So, I wanted to alert the members
11 of the Commission, as well as this Committee.
12 And I certainly wanted to take it up with our
13 Chairman of Media Services, and the
14 Subcommittee, the Task Force on Financing, to
15 talk about this issue as we go forward. I
16 just wanted to bring that to the Committee's
17 attention now.

18 CHAIRMAN RIVERA: Thank you, Jim,
19 and we commend that to the Subcommittee,
20 Diane, to start thinking about that, if you've
21 not already done so. Did you have something,
22 Cathy? No? Anybody else have any new

1 business to bring before the Committee?

2 All right. I want to thank you all
3 again for coming. We will try to meet again
4 before the end of the year. I'm working with
5 Barbara to get a date, and we'll get that date
6 to you as soon as possible, so please watch
7 your emails. And, again, thank you. We will
8 stand adjourned.

9 (Whereupon, the proceedings went
10 off the record at 11:26 a.m.)

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